

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs May 20, 2009

**STATE OF TENNESSEE v. DEMICO JEROME MCELROY**

**Direct Appeal from the Criminal Court for Sullivan County  
No. S52,793     Robert H. Montgomery, Jr., Judge**

---

**No. E2008-02018-CCA-R3-CD - Filed December 4, 2009**

---

The appellant, Demico Jerome McElroy, was convicted by a jury in the Sullivan County Criminal Court of unauthorized use of a vehicle and felony evading arrest, and he received a total effective sentence of two years, eleven months, and twenty-nine days. On appeal, the appellant challenges the trial court's imposition of consecutive sentences. Upon review, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Richard A. Tate, Blountville, Tennessee, for the appellant, Demico Jerome McElroy.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Brandon Haren, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Factual Background**

The record on appeal is sparse. The appellant was indicted for theft of property valued at \$10,000 or more but less than \$60,000 and for felony evading arrest. The record does not contain a transcript of the trial. However, the judgments of conviction reflect that a jury convicted the appellant of the lesser-included offense of unauthorized use of a vehicle, a Class A misdemeanor, and the charged offense of felony evading arrest, a Class E felony.

No witnesses testified at the sentencing hearing; the only proof submitted at the sentencing hearing was the appellant's presentence report. Additionally, counsel for the State and the appellant presented arguments. The presentence report reflected that the appellant had previously been

convicted in Georgia of criminal trespass, receiving stolen property, obstructing justice, possessing less than one-half ounce of marijuana, possession of an item with an altered serial number, and being a felon in possession of a gun. The presentence report also reflected that the twenty-eight-year-old appellant acknowledged he began smoking marijuana when he was seventeen years old and that he continued on a daily basis until he was charged with possession of marijuana in 2001.

The trial court found that the appellant was a standard, Range I offender and imposed a sentence of eleven months and twenty nine days for the Class A misdemeanor conviction and a sentence of two years for the Class E felony conviction. The trial court reviewed the presentence report and observed that at the time of the instant offenses, the appellant was serving a four-year probationary sentence for his conviction for being a felon in possession of a gun. The court ordered that the sentences should be served consecutively, noting that the appellant had an extensive criminal history, had committed the instant offenses while on probation for a felony, and was a dangerous offender. Additionally, the court found that consecutive sentencing was necessary to protect the public from further misconduct by the appellant and that consecutive sentencing was reasonably related to the severity of the offenses. On appeal, the appellant challenges the imposition of consecutive sentencing.

## **II. Analysis**

Again, we note that the appellant failed to include the trial transcript in the appellate record. This court has previously explained that

a party complaining about a sentence has the burden of establishing that the trial court imposed an improper one. In this respect, failure to include a transcript of the trial makes it impossible for us to conduct an appropriate *de novo* consideration of the case or to determine whether the trial court erred relative to its determinations which were based in any part on that evidence.

State v. Hayes, 894 S.W.2d 298, 300 (Tenn. Crim. App. 1994). The appellant carries the burden of ensuring that the record on appeal conveys a fair, accurate, and complete account of what has transpired with respect to those issues that are the bases of appeal. Tenn. R. App. P. 24(b); see also Thompson v. State, 958 S.W.2d 156, 172 (Tenn. Crim. App. 1997). “In the absence of an adequate record on appeal, this court must presume that the trial court’s rulings were supported by sufficient evidence.” State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991).

## **III. Conclusion**

Based upon the foregoing, we affirm the judgments of the trial court.

---

NORMA McGEE OGLE, JUDGE